

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,	§	
	§	
vs.	§	CRIMINAL DOCKET NO. 3-19-CR-0291-B
	§	
MARTIN ALBERTO CARDOZA	§	
CAVAZOS,	§	
	§	
Defendant.	§	

MEMORANDUM OPINION & ORDER

Before the Court is Defendant's Motion to Dismiss Indictment (Doc. 20) and the Government's Response (Doc. 21). For the reasons stated below, the Court **DENIES** Defendant's Motion to Dismiss.

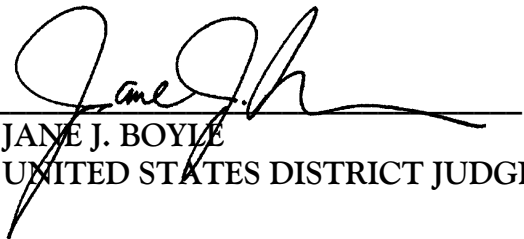
The Superseding Indictment charges Defendant with possession of a firearm by an illegal alien in violation of 18 U.S.C. § 922(g)(5). Doc. 18, Superseding Indictment. Defendant moves to dismiss this charge arguing that application of this statute to his circumstances violates his Second Amendment right to keep and bear arms. Doc. 20, Mot. to Dismiss, 1. In sum, Defendant argues that while he is not a U.S. citizen, he has lived in the U.S. almost continuously since 1984 when he was eleven years old and possessed firearms solely in the confines of his family's personal home for the purpose of self defense, and thus, he should be afforded the basic rights to bear arms and self defense guaranteed to "the people" by the Second Amendment. *Id.* at 3–4.

While Defendant's arguments are well taken, as Defendant acknowledges in his Motion, this Court's hands are tied by binding Fifth Circuit precedent foreclosing this argument. *Id.* at 4–5, 4 n.1 (recognizing the binding Fifth Circuit case law, but that Defendant "urges this motion in order to pursue this issue on appeal"). Specifically, the Fifth Circuit in *Portillo-Munoz* held that "the phrase

‘the people’ in the Second Amendment of the Constitution does not include aliens illegally in the United States . . . and . . . section 922(g)(5) is constitutional under the Second Amendment.” *United States v. Portillo-Munoz*, 643 F.3d 437, 442 (5th Cir. 2011). Therefore, in light of the fact that there is binding precedent directly on point requiring this Court to rule against the arguments advanced by Defendant, the Court **DENIES** Defendant’s Motion to Dismiss (Doc. 20).

SO ORDERED.

Dated: July 25, 2019.



JANE J. BOYLE
UNITED STATES DISTRICT JUDGE